CONTROL OF RENT ORDINANCE

Wong Miew Choong v. *Loh Fatt* (1961) M.L.J. 219

This case raises a very interesting and novel point on the Federation of Malaya Control of Rent Ordinance[1]. The facts of the case are very simple. The appellant-tenant paid the landlord-respondent a monthly rent of $78.12 for the whole of the ground floor of certain premises. The tenant sublet the front portion of the ground floor at a monthly rent of $125 per month plus an extra sum of $10.30 for water.

On the above facts the case falls squarely within paragraph (j) of section 12(l)[2] of the Ordinance, thus enabling the landlord to obtain an order for recovery of possession. Paragraph (j) of section 12 (1) reads thus[3]:

> where the tenant having sub-let the premises or part thereof receives in respect of such sub-letting rents (exclusive of any payment for the services provided

3. Page 86.

1. No. 2 of 1956; in Singapore the relevant Ordinance is the Control of Rent Ordinance, Cap. 242 (Laws of Singapore, 1955 edition).

2. Singapore — s.15(1) — paragraph (g).

3. The comparative Singapore provision reads thus:

> " Where the tenant having sublet the premises or part thereof receives in respect of such sub-letting, rents (excluding any municipal services paid by the tenant) for any sublet part of the premises in excess of the recoverable rent for that part, or rents which exceed in the aggregate one hundred and ten per centum of the recoverable rent paid by the tenant himself including the apportioned rental or value of any part of the premises retained by the tenant or not sub-let by him".

> by any local authority) for any sub-let part of the premises in excess of the maximum permitted rent for that part or rents which including the apportioned rental or value of any part of the premises retained by the tenant or not sub-let by him exceed in the aggregate by more than ten per centum the rent of the whole premises;[4]

The landlord wrote to the tenant demanding particulars of sub-letting in accordance with section 14[5]. The tenant, apparently knowing the landlord's intentions, wrote on 12th June to his sub-tenant informing him that his rent, with effect from 1st June, would be $57.20, and that the balance of $125 already paid as rent for the current month would, after deduction of $57.20, be credited to rent due later. The sub-tenant did not accept the reduced rent. On the same day the tenant, in reply to the landlord's demand for particulars, stated that 'he has sub-let the whole of the front portion of the premises to Messrs. Hwa Foong at a monthly rental of $57.20'.

On 13th June the landlord served the tenant with a notice to quit, the notice expiring on 31st July. As the tenant had failed to comply with the notice, the landlord instituted proceedings for recovery in the Sessions Court, where judgment was given for the landlord.

The tenant appealed, and the appeal rested on one ground only. He contended that at the date when the contractual tenancy was determined *(i.e.* 31st July) he was not receiving in respect of the portion of the premises sub-let by him any sum exceeding by more than ten per cent the rent of the whole ground floor — *i.e.* he was not receiving excessive rent, and thus paragraph (j) of section 12(1) did not apply.

The contention of the tenant, *prima facie,* appears to be attractive for there cannot be any doubt that when the contractual tenancy was determined, he was only receiving $57.20 rent. But whether this provides a good defence to an action for possession is another question. The answer to that question lies in the interpretation of section 12 (1)[6] which reads thus:

> No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases,...

As Ong J. held, the section merely withholds the remedy. To say that where a remedy is withheld, the cause of action does not arise is a *non sequitur.* Whenever a tenant has committed a breach of any of the terms of the tenancy, the landlord has a right of action against him but he cannot obtain an order for possession unless the breach committed falls within one of the fourteen grounds enumerated in section 12. To put it in another way, section 12(1) must be interpreted to mean that, notwithstanding that the landlord has a right of action, no 'order or judgment shall be made or given' except where the case falls within paras. (a) to (n) of the section.

Notwithstanding the difference in terminology, it is suggested that the effect is the same. The Federation Control of Rent Ordinance, 1948, follows the same wording as the Singapore section. However, the section was amended by the Select Committee appointed to examine the Bill on the Control of Rent Ordinance, 1956, which was to supersede the 1948 Ordinance. In so recommending the amendment, the Committee stated that it was done for "the purpose of clarification since the reference to one hundred and ten per centum appears to be capable of being misconstrued" — Council Paper No. 7 of 1956.

4. As to how the proper rent is to be computed under the provision, see *Hardial Singh v. Lim Lye Huat* (1960) 26 M.L.J. 240 (Singapore, Rose C.J.), and *Yew Seng Trading Co.* v. *Hardial Singh* (1961) 27 M.L.J. 180 (Singapore. C.A.).

5. Singapore — s.21.

6. Singapore — s.14.

On this interpretation, therefore, the landlord's right of action arose immediately upon the tenant sub-letting at an excessive rent, and it really does not matter what the tenant does to get out of the stipulated ground after the service of the notice to quit. It is submitted that this interpretation is the only correct one, since to do otherwise would mean that in many of the grounds enumerated the tenant can successfully defend a possession suit by complying with the breach alleged before the expiration of the notice to quit.

That this should be so is inherent in the very purpose of the Rent Control Ordinance. This purpose has very often been misunderstood, and the writer feels that he can do no better than to quote Ong J.[7]: "The Control of Rent Ordinance therefore merely operates as a fetter on the exercise of the common law rights of a landlord. Such being the case, any statutory invasion of or interference with private rights ought to be strictly construed. These fetters on a landlord's rights to recover possession of premises from a tenant are struck off if he can bring his claim under any of the fourteen grounds specified in section 12(1). The appellant by his own acts had removed these fetters and the landlord in this case has clearly established his right to re-possession under paragraph (j)."

Two comments are apposite here.

First, the case has established that once it is proved that any one of the fourteen grounds specified in section 12(1) has occurred, the landlord should be able to obtain an order for possession. The particular conditions need not be existing at the time when the contractual tenancy is determined.[8]

Second, Ong J. said[9]: "Moreover it is clear that the sub-tenant never agreed to a unilateral variation by the appellant of the terms of the sub-tenancy". It may appear from this statement that the position may be otherwise where the sub-tenant agrees to a reduced rent. It is submitted that this cannot be so, since section 12(1) must be interpreted to mean that upon any of the grounds therein stated having occurred, the landlord may recover possession. Variation, even mutual, of the sub-tenancy cannot avail the tenant protection. It is suggested that Ong J.'s statement is not necessary to the decision of the case; it may be explained away on the ground that having reached the conclusion that the tenant's claim fails, the learned judge finds himself fortified in his conclusion by the fact that the variation was a unilateral one. That this statement is merely *obiter* is clear for in the very next paragraph he clearly and lucidly explains the effect of section 12(1).

LEE MIN SEN.

7. (1961) 27 M.L.J. at 220.

8. An earlier case which decided on this point is W*oon Guat Chin v. Lim Sinn Poon* (1954) M.L.J. 184, where Thomson J. (as he then was) said:

"Construing paragraph (j) strictly it seems to me that it is contravened if at any time, or, at any rate, any time after the commencement of the Ordinance, the tenant has received rents amounting to more than 75 per cent of the rent paid by him to the landlord".

Here the learned judge was construing s.13(l) of the Control of Rent Ordinance, 1948. This was followed by Good J. (as he then was) in *Wong Yue* v. *Lim Teng Kooi* (19B8) M.L.J. 53, which case the learned Sessions Court President felt bound, and to which Ong J. agreed.

9. (1961) 27 M.L.J. at 220.